

Daniel D. Harshman (SBN# 177139)
Charles E. Wheeler (SBN #82915)
Cozen O'Connor
425 California Street, Suite 2400
San Francisco, CA 94104
Telephone: (415) 617-6100
Facsimile: (415) 617-6101
E-mail: dharshman@cozen.com
cwheeler@cozen.com

Attorneys for Plaintiff
PSI Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PSI CORPORATION (f/k/a FRIENDLYWAY CORPORATION, f/k/a BIOFARM, INC.).

Case No. C 07-02869 SBA

Plaintiff,
vs.

ALEXANDER VON WELCZECK, HENRY LO,
MICHAEL DRAPER, and FRIENDLYWAY
AG,

**PSI CORPORATION'S REQUEST FOR
JUDICIAL NOTICE FOR ITS MOTION
TO DISMISS DEFENDANTS VON
WELCZECK'S AND LO'S CROSS-
COMPLAINT**

JURY TRIAL DEMANDED

Date: September 11, 2007

Time: 1:00 pm

Dept.: United States District Court, Oakland
Division, Courtroom 3

FRIENDLYWAY, INC., KARL
JOHANNSMEIER, PACIFIC CAPSOURCE,
INC., and DERMA PLUS, INC.,

Nominal Defendants.

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1 Pursuant to Federal Rule of Civil Procedure 201, Plaintiff PSI Corporation (“PSI”) requests
 2 that the Court take judicial notice of four (4) documents as part of its Motion to Dismiss Defendants
 3 Alexander von Welczeck’s and Henry Lo’s Cross-Complaint. The documents include:

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- 5 (1) August 13, 2004 Share Exchange Agreement (the “SEA”) by and between Biofarm,
 Inc., Alexander von Welczeck and friendlyway AG (Exhibit 1 to Memorandum of
 Points and Authorities);
- 6 (2) December 10, 2004 Closing Agreement for the SEA (Exhibit 2 to Memorandum of
 Points and Authorities);
- 7 (3) Friendlyway Corporation’s March 9, 2006 Securities and Exchange Commission
 Form 10-KSB (Exhibit 3 to Memorandum of Points and Authorities); and
- 8 (4) April 27, 2006 Share Exchange Agreement by and between Friendlyway Corporation,
 Kenneth J. Upcraft and Pantel Systems, Inc. (the “Pantel Agreement”) (Exhibit 4 to
 Memorandum of Points and Authorities).

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10 When assessing a motion to dismiss, the Court may consider documents attached to the
 11 operative pleadings or documents incorporated by reference in the pleadings. *United States v.*
Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) (citing *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir.
 12 2002)). Moreover, the Court also can consider a number of matters of which it may properly take
 13 judicial notice without converting the motion to dismiss to one for summary judgment. *In re*
14 Calpine Corp. Sec. Litig., 288 F. Supp. 2d 1054, 1074 (N.D. Cal. 2003); *see also Barron v. Reich*, 13
15 F.3d 1370, 1377 (9th Cir. 1994) (records and reports of administrative bodies); *Emrich v. Touche*
16 *Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988) (court records); *In re Copper Mountain Sec. Litig.*,
17 311 F. Supp. 2d 857, 863 (N.D. Cal. 2004) (SEC filings).

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19 The Court may consider exhibits 1 through 4 of PSI’s Memorandum of Point and Authorities
 20 without converting the present motion to one for summary judgment as the exhibits were either
 21 attached to or referenced in the underlying pleadings or are subject to judicial notice. The SEA,
 22 Officers’ Certificates and Pantel Agreement are referenced in and incorporated into Defendants
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1 Welczeck's and Lo's Cross-Complaint. [Docket No. 28 at ¶¶ 6, 8, 9, 10, 18, and 24] The September
2 20, 2005 Form 8-K is a SEC filing (submitted while Defendants controlled the company) that
3 publicly disclose facts that allegedly support Count One of Defendants' Cross-Complaint. [Docket
4 No. 28 at ¶¶ 12-16] As Defendants either referenced and incorporated the documents at issue into
5 their Cross-Complaint or submitted the documents to the SEC for public dissemination, the Court
6 may consider the documents when assessing the merits of Defendants' Cross-Complaint as tested by
7 PSI's motion to dismiss.

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9 WHEREFORE, Plaintiff PSI Corporation respectfully requests that the Court take judicial
10 notice of Exhibits 1 through 4 of its Memorandum of Points and Authorities in Support of its Motion
11 to Dismiss Defendants Alexander von Welczeck's and Henry Lo's Cross-Complaint.

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13 COZEN O'CONNOR

14 Dated: July 16, 2007

15 By: s/Daniel D. Harshman
16 Daniel D. Harshman
17 Attorneys for Plaintiff
18 PSI Corporation